

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

BellSouth Petition for)
Limited Modifications of LATA)
Boundary to Provide Expanded Local)
Calling Service (ELCS))

WC Docket No. 02-134

MEMORANDUM OPINION AND ORDER

Adopted: December 20, 2002

Released: December 20, 2002

By the Chief, Competition Policy Division:

I. INTRODUCTION

1. On May 2, 2002, BellSouth Telecommunications, Inc. and BellSouth Corporation (BellSouth), pursuant to section 3(25) of the Communications Act of 1934, as amended,¹ filed a petition to provide two-way, flat-rated, non-optional, expanded local calling service (ELCS) between various exchanges in Louisiana.² BellSouth's petition requests limited modifications of a local access and transport area (LATA) boundary.³ For the reasons stated below, we grant BellSouth's request.

II. BACKGROUND

2. Requests for new ELCS routes are generally initiated by local subscribers. IntraLATA ELCS routes can be ordered by a state commission.⁴ Under section 3(25)(B) of the

¹ See 47 U.S.C. § 153(25).

² See *Comment Sought on BellSouth Request for Limited Modification of LATA Boundary to Provide Expanded Local Calling Service Between Certain Exchanges in Louisiana*, WC Docket No. 02-134, Public Notice, DA No. 02-1309 (rel. June 4, 2002). ELCS is requested between the following exchanges: Albany and Amite; Albany and Kentwood; Springfield and Amite; Springfield and Kentwood; and Springfield and Independence.

³ Section 3(25) of the Act defines LATAs as those areas established prior to enactment of the Telecommunications Act of 1996 by a Bell Operating Company (BOC), as permitted under the AT&T Consent Decree, or "established or modified by a BOC after such date of enactment, and approved by the Commission." 47 U.S.C. § 153(25).

⁴ *United States v. Western Electric Company, Inc.*, 569 F. Supp. 990, 995 (D.D.C. 1983). "The distance at which a local call becomes a long distance toll call has been, and will continue to be, determined exclusively by the various state regulatory bodies." *Id.*

Act, requests for interLATA ELCS routes fall within the Federal Communications Commission's (Commission) exclusive jurisdiction over the modification of LATA boundaries.⁵ Applying a two-part test, the Commission will grant a request for an ELCS LATA modification where a petitioning BOC shows that the proposed modification is justified by a significant community of interest among the affected exchanges, and that the grant of the requested waiver will not have any anticompetitive effects.⁶ A BOC is deemed to have made a *prima facie* case supporting grant of the proposed modification if the ELCS petition: (1) has been approved by the state commission; (2) proposes only traditional local service (*i.e.*, flat-rated, non-optional ELCS); (3) indicates that the state commission found a sufficient community of interest to warrant such service; (4) documents this community of interest through such evidence as poll results, usage data, and descriptions of the communities involved; and (5) involves a limited number of customers or access lines.⁷

3. The BellSouth petition proposes to establish two-way, flat-rated, non-optional ELCS, and is accompanied by an order issued by the Louisiana Public Service Commission (LPSC) approving the ELCS petitions on the basis that sufficient communities of interest exist to warrant ELCS, a statement that only traditional local service is proposed, evidence from the state commission that a sufficient community of interest exists,⁸ a statement of the number of access lines involved,⁹ and a statement that *de minimis* rate increases will result.¹⁰ We note that no comments were filed in response to the BellSouth petition.

III. DISCUSSION

4. We conclude that BellSouth has made its *prima facie* case and that its petition satisfies the criteria established by Commission precedent. Applying the first part of the two-part test, we find that BellSouth has shown that a community of interest exists among the relevant exchanges. Although many residents in Albany and Springfield live in the Baton Rouge LATA, the majority of businesses, medical facilities, schools, and government offices used by those residents

⁵ *Application for Review and Petition for Reconsideration or Clarification of Declaratory Ruling Regarding US WEST Petitions to Consolidate LATAs in Minnesota and Arizona*, Memorandum Opinion and Order, 14 FCC Rcd. 14,392, 14,399 (1999).

⁶ *Petitions for Limited Modification of LATA Boundaries to Provide Expanded Local Calling Service (ELCS) at Various Locations*, Memorandum Opinion and Order, 12 FCC Rcd 10646, 10649-50 (1997). In this order, the Commission also delegated authority to the Common Carrier Bureau (now the Wireline Competition Bureau) to act on petitions to modify LATA boundaries. *Id.* at 10657-58. See also *Application for Review of Petition for Modification of LATA Boundary*, Order on Review, NSD-L-98-116, FCC 02-233 (rel. August 23, 2002).

⁷ *Id.* at 10659.

⁸ Although no poll was taken, the LPSC received many requests for flat-rated ELCS from citizens in Albany and Springfield. BellSouth Petition at 2.

⁹ The exchanges involved in this petition have the following number of access lines: Albany has 5,897 access lines; Amite has 7,861 access lines; Independence has 4,855 access lines; Kentwood has 3,927 access lines; and Springfield has 4,042 access lines. *Id.*

¹⁰ BellSouth states that there will be no rate change associated with this request. *Id.*

are located in the New Orleans LATA. BellSouth also proposes offering two-way, flat-rated, non-optional local service, a further indicator that a community of interest exists.

5. Applying the second part of the two-part test, we find that granting the petition would have a minimal effect upon competition. The proposed ELCS would affect the small number of access lines in the Albany and Springfield exchanges.¹¹ Most significantly, however, BellSouth has opened its market to competition in Louisiana, and accordingly has been granted authority to offer long distance service in that state.¹² As a result, we conclude that granting BellSouth's petition serves the public interest by permitting minor LATA modifications where such modifications are necessary to meet the needs of local subscribers. Accordingly, we approve BellSouth's petition for limited LATA modifications to provide two-way, flat-rated, non-optional ELCS. In reaching this conclusion, we note that no comments were filed opposing this petition.

6. We grant this relief solely for the limited purpose of allowing BellSouth to provide ELCS between the specific exchanges or geographic areas identified in the request. The LATA is not modified to permit the BOC to offer any other type of service, including calls that originate or terminate outside the specified areas. Thus, two-way, flat-rated, non-optional ELCS between the specified exchanges will be treated as intraLATA service, and the provisions of the Act governing intraLATA service will apply.¹³ Other types of service between the specified exchanges will remain interLATA, and the provisions of the Act governing interLATA service will apply.

VI. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to sections 3(25) and 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 153(25), 154(i), and authority delegated by sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, that the request of BellSouth Telecommunications, Inc. and BellSouth Corporation for LATA modifications for the limited purpose of providing two-way, flat-rated, non-optional ELCS at specific locations, identified in WC Docket No. 02-134, IS APPROVED.

FEDERAL COMMUNICATIONS COMMISSION

Michelle M. Carey
Chief, Competition Policy Division

¹¹ See *supra* n.9. In assessing the number of lines affected by this petition, we note that the great majority of calls will be made from the Albany and Springfield exchanges in the Baton Rouge LATA, to exchanges in the New Orleans LATA (Amite, Kentwood, and Independence exchanges). Accordingly, for the purposes of this application, the access lines we consider are those of the Albany (5,897) and Springfield (4,042) exchanges.

¹² Application See *Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, FCC 02-147 (rel. May 15, 2002).

¹³ The BOC may provide ELCS service without meeting the section 271 requirements (*see* 47 U.S.C. § 271(a)), and a separate affiliate is not required (*See* 47 U.S.C. § 272(a)(2)(B)).

